

REMARKS

It should be noted that October 25, 2008 fell on a Saturday, ensuring that this paper is timely filed as of Monday, October 27, 2008, the next business day.

Applicants and the undersigned are most grateful for the time and effort accorded the instant application by the Examiner. The Office is respectfully requested to reconsider the rejection present in the outstanding Office Action in light of the foregoing amendments and the following remarks.

In the Office Action dated August 25, 2008, Claims 1-20 were pending. Of these claims, Claims 1 and 13 are independent claims; the remaining claims are dependent claims. Claims 1-20 stand finally rejected. Applicants intend no change in the scope of the claims by the changes made by these amendments.

It should also be noted Applicants are not conceding in this application the claims amended herein are not patentable over the art cited by the Examiner, as the present claim amendments are only for facilitating expeditious prosecution. Applicants respectfully reserve the right to pursue these and other claims in one or more continuations and/or divisional patent applications. Applicants specifically state no amendment to any claim herein should be construed as a disclaimer of any interest in or right to an equivalent of any element or feature of the amended claim.

Rejections under 35 USC § 112

Claims 1-20 stand rejected under 35 USC § 112, first paragraph, as failing to comply with the written description of the invention requirement. Applicants respectfully disagree and request reconsideration and withdrawal of this rejection.

The Examiner states that new matter appears in that the independent claims “recite wherein the offers include optimal advertisements determined from real time learning from dynamic analyses of promotional experimentation of the various promotions offered to various other customers.” *Office Action*, pp. 2 (emphasis in original). Applicants respectfully submit that the Examiner confuses how the instant invention operates and has made this rejection in error.

The Examiner is kindly reminded that “the amount of the promotion is deliberately varied by the inventive system during the sampling period, and statistics are kept by the system to determine what percentage of customers are likely to buy or exhibit interest in the product at different promotional levels.” *Specification*, paragraph [0075]. “***Given the percentage of customers who buy***...the system is able to compute an optimal promotion.” *Id* at [0076] (emphasis added). Clearly then, the optimal promotion is determined from experiments on “other” customers in a sample (e.g. the ones who buy and do not buy) and presents the promotion (determined based on the sampling of the other customers) to the customer in question.

Therefore, Applicants respectfully submit that the claims, as previously presented, did not include new matter.

Claims 1 and 13 stand rejected under 35 USC § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention. The Examiner again confuses the claim language in relation to the phraseology “other customers”, stating that the claim language does not indicate that the promotions are offered to a customer. *Office Action*, pp. 3-4. Applicants respectfully submit that the Examiner is interpreting the claim language incorrectly and making this rejection in error.

The claim language states, *inter alia*, “...*providing a promotion* selected from the set of promotions to a customer...” Claim 1 (emphasis added). Clearly the claim language indicates that a set of promotions is determined from real time analysis on other customers and then is offered to a customer. Thus, Applicants respectfully request reconsideration and withdrawal of this rejection.

Claims 1 and 13 stand rejected under 35 USC § 112, second paragraph, because “the claim does not recite various promotions offered to a customer or other customers”. *Office Action*, pp. 4. Applicants respectfully request that this rejection be reconsidered and withdrawn in light of the fact that the claim language has been amended to recite, *inter alia*, “...determined from real time learning from dynamic analyses of promotional experimentation of various promotions offered to various other customers...” Claim 1. Thus, there is sufficient antecedent basis for this claimed limitation. To the extent that the Examiner remains confused, Applicants respectfully request that the Examiner contact the undersigned at the telephone number listed below.

Claim 14 stands rejected for reciting new matter. Applicants respectfully disagree and kindly direct the Examiner's attention to paragraph [0072] wherein it states "[t]he *sampling engine 262 of the Dynamic Optimization System 270 may be used by many different applications to obtain information about current market conditions.*"

Applicants respectfully submit that this claim (and all other claims) find full support throughout the specification. Thus, Applicants respectfully request reconsideration and withdrawal of this rejection.

Rejections under 35 U.S.C. § 103(a)

Claims 1-20 stand rejected under 35 USC § 103(a) as obvious over Herz et al. US Patent Publication No. 2001/0014868 (hereinafter "Herz") in view of Dahm et al. US Patent No. 6,301,471 (hereinafter "Dahm"). Applicants respectfully request reconsideration and withdrawal of these rejections.

Applicants previously submitted remarks remain equally applicable and are incorporated by reference herein. For the sake of brevity, Applicants briefly point out an exemplary shortcoming of the cited art with regard to the instantly claimed invention.

Herz does not teach or suggest, either alone or in any combination with the cited art or the state of the art, "...optimal advertisements *determined from real time learning from dynamic analyses of promotional experimentation of various promotions offered to various other customers...*" Claim 1 (emphasis added). Claim 13 contains a similar limitation.

Applicants have repeatedly made clear that:

The inability to effectively exploit Internet transaction information is overcome by the method and system of the present invention, *which enable Internet businesses to conduct real-time, online experiments on a sample of transactions and determine marketplace sensitivities*. Analysis of the results of the experiments reveal optimal values of key market decision variables such as price, content of banner ads, promotion levels, quantity discount schemes, etc. The experiments may be automatically conducted on an on-going basis, or may be conducted on a periodic basis. The resulting optimal values may also be implemented automatically. The system offers total flexibility to the users to conduct and control the experiments. The experimental process is based upon rigorous statistical and econometric principles.

Specification at [0026] (emphasis added).

Herz only mentions “real time” once and it is not in connection with “...optimal advertisements *determined from real time learning from dynamic analyses of promotional experimentation of various promotions offered to various other customers...*” as per the independent claims. Herz only contemplates “In addition to bulletin boards and mailing lists, alternative fora that can be created and in which buyers' clubs can gather include real time typed or spoken conversations...” *Herz at [0295] (emphasis added).* Thus, Herz represents the static learning and profiling that the instant invention, in part, is directed at overcoming through real time experimentation and determination of optimal promotions.

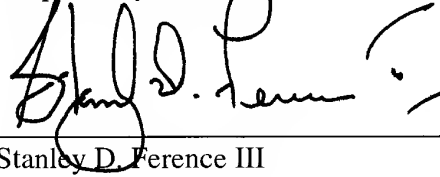
Nothing in Dahm or any other art of record accounts for the deficiency of Herz noted above. Therefore, Applicants respectfully request reconsideration and withdrawal of these rejections.

Conclusion

In summary, it is respectfully submitted that the instant application, including Claims 1-13, are presently in condition for allowance. Notice to the effect is hereby

earnestly solicited. Applicants' undersigned attorney would welcome further discussion with the Office in the event there are any further issues in this application.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Stanley D. Ference III", written over a horizontal line.

Stanley D. Ference III
Registration No. 33,879

Customer No. 35195
FERENCE & ASSOCIATES LLC
409 Broad Street
Pittsburgh, Pennsylvania 15143
(412) 741-8400
(412) 741-9292 - Facsimile

Attorneys for Applicants